

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

DOVER MOBILE ESTATES,  
Debtor.

Case No. 91-05285

GREAT AMERICAN BANK, FSB,  
Plaintiff,

vs.

DOVER MOBILE ESTATES,  
Defendant.

**MEMORANDUM DECISION**

**INTRODUCTION**

Before the Court is the Defendant's Motion for Partial Summary Judgment to establish that the California anti-deficiency statute is applicable to the loan that is the subject of this adversary proceeding, and the plaintiff is not entitled to a deficiency judgment. For the reasons that follow, the motion is denied.

**FACTS**

The essential facts are undisputed. Great American Bank loaned George Magnett \$4.8 million on July 7, 1985 and took a security interest in Old Town Shopping Center in Los Gatos. The transaction was not a purchase money mortgage. Magnett also granted a second deed of trust in Old Town to Saratoga Savings & Loan to secure a loan for \$1.6 million. Magnett defaulted on its

1 obligation to Saratoga, which commenced foreclosure proceedings in November 1985. Magnett filed  
2 a chapter 11 petition, and Saratoga obtained relief from the stay to proceed with a foreclosure sale on  
3 December 4, 1986.

4 Dover Mobile Estates purchased Old Town at Saratoga's trustee sale. To facilitate the  
5 transaction, Dover assumed Magnett's obligation to GAB. Otherwise, GAB could have proceeded to  
6 foreclose its security interest. GAB and Dover renegotiated the terms of the note in January 1987.  
7 Dover defaulted on the note, and GAB commenced this action on June 26, 1991 in Superior Court  
8 for the appointment of a receiver and for judicial foreclosure. GAB is seeking a personal deficiency  
9 judgment against the general partner of Dover. The RTC took over GAB in August 1991 and sold  
10 the note to GAP Portfolio Partners, the real party in interest.

### 11 ISSUE

12 The narrow legal issue is whether GAP's status as lender has been transmuted to a vendor in a  
13 purchase money mortgage for purposes of application of the anti-deficiency statute, C.C.P. § 580b,  
14 such that GAP is barred from recovering a deficiency judgment from Dover.

### 15 DISCUSSION

#### 16 A. Standard for Summary Judgment

17 Under F.R.C.P. 56(c), summary judgment is proper "if the pleadings, depositions, answers to  
18 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no  
19 genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of  
20 law." Only genuine disputes over material facts that might determine the outcome of the suit under  
21 the applicable law will properly preclude summary judgment. Anderson v. Liberty Lobby, Inc., 477  
22 U.S. 242, 106 S.Ct. 2505, 2510 (1986). Summary judgment is proper if a party fails to make a  
23 sufficient showing of an element essential to that party's case, and on which that party bears the  
24 burden of proof. Celotex Corp. v. Catrett, 477 U.S. 316, 106 S.Ct. 2548, 2552 (1986). The  
25 evidence is to be viewed in the light most favorable to the non-moving party, and all justifiable  
26 inferences are to be drawn in his favor. Anderson, 106 S.Ct. at 2513.

#### 27 B. Applicability of the Anti-deficiency Statute

##### 28 1. The Standard Purchase Money Transaction

1 California Code of Civil Procedure 580b precludes lenders from obtaining a deficiency  
2 judgment following a foreclosure sale if the property purchased is residential property of one to four  
3 units in which the purchaser will reside. For other real property sales transactions, section 580b bars  
4 lenders who are vendors from obtaining a deficiency judgment. C.C.P. § 580b. In the standard  
5 purchase money mortgage transaction, the vendor of real property retains an interest in the property  
6 sold to secure payment of part of the purchase price. Roseleaf Corp. v. Chierighino, 59 Cal.2d 35,  
7 41, 27 Cal. Rptr. 873 (1963).

8 Section 580b does not preclude third party commercial lenders who are non-vendors from  
9 obtaining a deficiency judgment. Kistler v. Vasi, 71 Cal.2d 261, 263, 78 Cal. Rptr. 170 (1969). See  
10 also 3 Witkin, Summary of California Law, "Security Transactions in Real Property" § 166 (9th ed.  
11 1987). Dover argues that GAB has been transmuted into a vendor for purposes of section 580b  
12 because the purchase would not have been possible but for the loan transaction with GAB. See  
13 LaForgia v. Kolsky, 196 Cal.App.3d 103 (Cal. App. 1987). The applicability of section 580b  
14 depends on the circumstances involved in making the loan rather than subsequent events. Paramount  
15 Savings & Loan Ass'n v. Barber, 263 Cal.App.2d 166 (Cal. App. 1968).

## 16 2. Variations from the Standard

17 When a transaction involves a variation from the standard purchase money mortgage  
18 transaction, the anti-deficiency statute applies only if the factual circumstances come within the  
19 purposes of the statute. Roseleaf, 59 Cal.2d at 41. The purposes of section 580b are to prevent  
20 overvaluation of the security by placing the risk of inadequate security on the vendor, who is in the  
21 best position to know the fair market value of the collateral, and to stabilize property values. Id. at  
22 42. Thus, a defaulting purchaser would not risk losing the property to the foreclosing creditor and  
23 yet remain liable on the purchase price. Id.

24 Where a subsequent purchaser of real property assumes a loan that was originally not a  
25 purchase money loan, the subsequent purchaser is not protected from a deficiency judgment under  
26 section 580b. Bernhardt, California Mortgage and Deed of Trust Practice § 8.23 (2d ed. 1990); 4  
27 Miller & Starr, California Real Estate Law § 9:190 (2d ed. 1989). There is authority that a  
28 nonpurchase money mortgage may be transmuted into a purchase money mortgage for purposes of

precluding liability on a deficiency under section 580b. LaForgia v. Kolsky, 196 Cal.App.3d 103 (Cal. App. 1987); Shepard v. Robinson, 128 Cal.App.3d 615 (Cal. App. 1981); Jackson v. Taylor, 272 Cal App.2d 1 (Cal. App. 1969). However, as noted by the California Supreme Court in Kistler v. Vasi, the plain language of section 580b applies to vendors. 78 Cal. Rptr. at 171-72. Parties are free to structure a loan transaction to either incorporate or avoid the protection from a deficiency provided under section 580b. Id. Further, the purposes of section 580b, as outlined in Roseleaf, would not be served by barring the plaintiff from seeking a deficiency in this case. See Goodyear v. Mack, 159 Cal.App.d 654, 205 Cal. Rptr. 702 (Cal. App. 1984); Spangler v. Memel, 7 Cal.3d 605, 102 Cal. Rptr. 807 (1972). The bank was never in a position to overstate the value of the collateral.

### CONCLUSION

Because the purposes of section 580b would not be served by barring a deficiency judgment, the plaintiff is not transmuted into a purchase money vendor under section 580b. The Defendant's Motion for Partial Summary Judgment is denied.